

Special analysis: FOIA request as a post-audit strategy

Tax auditors generate lots of paper and electronic files during audits. You can use those resources to your advantage during post-audit penalty negotiations with an IRS appeals officer, but you have to get them first.

To do that, you must make a request for your administrative case file under the Freedom of Information Act, or FOIA.

See what the appeals officer sees. Requesting your case file simply evens the playing field with appeals officers, who have routine access to those documents. In response to your FOIA request, you may receive agent notes, including worksheets, work papers, notes, emails, computations, interviews with employees and other daily audit-related materials. Also available are auditors' written recommendations regarding proposed tax liabilities, adjustments and penalties. *Be patient:* What you're looking for may be only one of several pages buried in the fifth box.

Mechanics of an FOIA request. FOIA requests are sent to the IRS Disclosure Office for your business location. See www.irs.gov/uac/irs-disclosure-offices for a list of these offices. Requests are usually accompanied by a fee, which the IRS will sometimes waive.

To speed the process, make sure your request is as thorough and specific as possible by including the case number or other identifying number. *Key:* If you can't pinpoint specific documents, a statement that you want your examination file related to the should be sufficient.

There are four basic elements to your FOIA request letter:

- State that you're making a request under the Freedom of Information Act
- Identify the records you're seeking
- Establish your authority to receive the records by including your name and address, along with a copy of your driver's license
- Commit to paying any fees that may apply.

The IRS has 20 days to decide whether it will honor your request. If it decides to honor your request, it can extend the 20-day deadline by 10 additional days in unusual circumstances, but it must inform you of this extension. *What's unusual:* The IRS may need to gather records from a field office or review a large number of documents.

There are nine statutory exemptions and three exclusions to FOIA, but run-of-the-mill requests for examination case files for civil audits (not criminal investigations) generally don't fall under any exemption or exclusion.

Requests that are denied may be appealed administratively. *What's appealable:* the withholding of a document or a denial of a fee waiver. You may also appeal because the IRS failed to conduct an adequate search for the documents you requested.